

Delhi High Court

**State Bank Of India vs Mohd. Shahjahan on 9
July, 2010**

Author: Dr. S. Muralidhar

IN THE HIGH COURT OF DELHI AT NEW DELHI

**W.P.(C) 9810/2009 & CM APPL No. 8001/2009
(for stay)**

**STATE BANK OF INDIA Petitioner
Through Mr. Rajiv Kapur, Advocate**

versus

MOHD.SHAHJAHAN Respondent in person

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes ORDER

09.07.2010

1. The State Bank of India („SBI□) is aggrieved by an order dated 19
th May 2009 passed by the Central Information Centre („CIC□) in the
appeal filed by the Respondent directing Central Public Information
Officer („CPIO□) to provide within ten working days the following
information: "(i) clear and specified information on how his

applications dated 25th January 2007, 9th April and 8th May 2008 had been processed and dealt with by the competent authority, (ii) the disaggregated marks awarded to him in the

promotion process and

(iii) information in respect of the bills submitted by him as stated in his original application for information."

2. By the impugned order, the CIC also directed the CPIO to explain why the penalty proceedings under Section 20 of the Right to Information Act 2005 („RTI Act□) should not be initiated against him for not providing the information sought by him.

3. By an order dated 6th July 2009, this Court while directing notice to issue in this writ petition stayed the operation of the impugned order subject to the Petitioner depositing Rs. 10,000/- towards litigation costs for the Respondent.

4. This Court has heard the submissions of Mr. Rajiv Kapur, learned counsel appearing for the Petitioner and the Respondent who appears in person.

5. The background to the present petition is that on 25th January 2007 the Respondent who is working as Special Assistant in the Chainpur Branch of SBI at Muzaffarpur in Bihar submitted an application to the Assistant General Manager under the RTI Act stating that the SBI had declined his application concerning the duration of his suspension and the disposal of certain other matters. He stated that he had sought permission to approach the competent court for redressal. In that connection he had submitted three reminders dated 6th October 2007, 20th November 2007 and 8th November 2007 and yet received no response. He accordingly sought the following information:

"(i) What is the actual position of the application dated 25th January 2007?

(ii) What steps have been taken on the application till now?

(iii) That when the said application was received to Bank and the said applications were pending upon what durations and on which level like branch, regional officer or local head office and at present from whom the present application is pending.

(iv) That I may be provided the copy of the internal level correspondence.

(v) What is the procedure to take decision on this type of applications?"

6. Apart from the above, he pointed out in his application dated 27th May 2008 that on 9th April 2008 he had submitted an application as regards not being promoted to the JMGS-I and for disclosure of the marks awarded in the Performance Appraisal Form („PAF□). A reminder was also sent on 8th May 2008. In this connection, he sought the following information: "(i) What steps have been taken from 9th April 2008 to 8th May 2008 on this application.

(ii) In case my application is not disposed of till now then by whom the said matter is pending how the said matter is pending.

(iii) In this regard if there is any correspondence or any discussion committed by corporate office or local head office or regional office or departmental level, I may be supplied the copy of the same.

(iv) That I may supplied three section wise details marks means written, interview and marks obtained in PAF of the promotion examinations of four backward OBC candidates organized on 30th December 2007, who obtained minimum marks in written examinations but on the basis of marks obtained in interview and service book, finally got success. In case there is no arrangement of reservation of other backward classes it be supplied on general category candidates and information be supplied.

(v) In my matter the supplied the section wise details of marks obtained in written, interview and PFA, also stated what was the finally cut-off for pass?"

7. The third issue raised by the Petitioner concerned the reimbursement of certain amounts and arrears of HRA and CCA.

8. By a letter dated 5th July 2008, the CPIO of the SBI informed the Petitioner that "the details of marks obtained in PAF and information concerning promotion are kept secret." The CPIO also declined to provide information as regards the appraisal of the four candidates belonging to the OBC category and that there is no provision that required the Respondent to seek permission of the SBI to approach the competent Court. The Petitioner then again wrote to the Respondent

on 24th September 2008 drawing attention to the decision of the Supreme Court in *Dev Dutt v. Union of India* (2008) 8 SCC 725 and sought to know the reasons why the information was declined.

9. The appeal filed by the Respondent against the denial of the information by the CPIO was dismissed by the Chief General Manager on 12 th September 2008. Thereafter, a second appeal was filed before the CIC. In issuing the direction in the impugned order as noticed hereinbefore, the CIC opined that the CPIO had not indicated the provision under the RTI Act under which information sought by the Respondent could be denied to him.

10. Before the CIC, the Respondent placed reliance on an order dated 8th December 2008 passed by the High Court of Punjab and Haryana in *State Bank of India v. Central Information Commissioner and Another* (C.W.P. No. 20566 of 2008) by which a Division Bench of that Court negated a similar plea by the SBI declining to provide information under the RTI Act to its employee who was Respondent No. 2 in that case. The SBI on its part produced before the CIC an order dated 20th March 2009 passed by the Supreme Court in *Special Leave Petition (Civil) No. 5296 of 2009* staying the aforementioned order dated 8th December 2008. The CIC concluded that the stay order was confined to the case arising out of the C.W.P. No. 20566 of 2008 and will not automatically extend to all the cases.

11. Mr. Rajiv Kapur, learned counsel for the Petitioner first submits that the impugned orders of the CIC contradict several of its earlier orders where similar requests were declined. He submits that without distinguishing those orders, the CIC has passed the impugned order. It ought to have at the least, constituted a larger Bench if it was going to disagree with its own earlier order. It was for this reason that this Court had by the order dated 8th June 2009 directed notice to issue to the CIC to be impleaded as party.

12. This Court is unable to accept the above submission. There is no question of making the CIC, whose order is under challenge in this writ petition, a party to this petition. Like any other quasi-judicial authority, the CIC is not expected to defend its own orders. Likewise, the CIC cannot be called upon to explain why it did not follow any of its earlier orders. That the CIC should not be made a party in such proceedings is settled by the judgment of the Division Bench of this Court in *Union Public Service Commission v. Shiv Shambu* 2008 IX AD (Del) 289.

13. It is correct that there were certain earlier orders of the CIC

holding that the disclosure of notings in the Annual Confidential Report („ACR□) to the employees against whom an adverse remark was made might embarrass the officer who has made those remarks and, therefore, applying the provision of Section 8 (i) (j) of the RTI Act such information is protected from disclosure. However, it appears to this Court that the CIC has, while passing such orders, not appreciated the settled law in regard to disclosure of adverse entries in the ACR.

14. In *Vijay Kumar v. State of Maharashtra* (1988) Supp SCC 674, it was held that an uncommunicated adverse report cannot form the basis for denying the benefits to the government servant when similar benefits were extended to his juniors. In *State of Gujarat v. Suryakant Chunilal Shah* (1999) 1 SCC 529, the importance of having to communicate adverse entries in an ACR to the concerned government servant was explained. It was pointed out that this was primarily to forewarn the government servant "to mend his ways and to improve his performance." This was also the law as explained in *State of U.P. v. Yamuna Shanker Misra* (1997) 4 SCC 7. Therefore, the mere fact that the communication of an adverse entry in an ACR to the employee concerned might „embarrass□ the superior officer, can hardly be a ground to refuse the request by such employee that the adverse entry be communicated to him. Therefore, the approach by the CIC in the earlier orders which are relied upon by the SBI and in which similar requests, as made by the Respondent in this case, were declined do not appear to be correctly decided.

15. In any event, whatever may be the contradictions between the orders of the CIC, such orders do not bind this Court, which has to interpret the law keeping in view the present legal position and the judgments of the Supreme Court. Therefore, the first ground urged by learned counsel for the Petitioner is rejected.

16. Mr. Kapur then submits that the decision of the High Court of Punjab and Haryana in C.W.P. No. 20566 of 2008 directing the disclosure of information in similar circumstances has been stayed by the Supreme Court in SLP (Civil) No. 5296 of 2009 and, therefore, till such time the Supreme Court does not render its decision thereon, this Court should adjourn the present case. From the copy of the judgment of the Punjab & Haryana High Court dated 8th December 2008 in C.W.P. No. 20566 of 2008, it is seen that the Respondent No. 2 therein, who was the applicant for information, was being considered for promotion as Security Officer from the Middle Management Grade Scale-III („MMGS-III□) to the Senior Management Grade Scale-IV („SMGS□IV□) in the promotion year 2006-07. He sought information

under the RTI Act on three issues:

"1. The policy/criteria adopted by the Bank for inclusion in the zone of Selection and promotion of Security Officers from MMGS-III to SMGS-IV for the promotion year 2006-07.

2. For the sake of transparency, please advise me the score of my last five years performance like the prevailing practice of advising the test performance to general cadre officers.

3. My shortcomings, if any, which had formed the basis of excluding my name from the list of the last year promotions."

17. The CIC directed disclosure of the following information to the Petitioner:

"1. The marks obtained by the last selected candidate under various heads (without disclosing the name).

2. The marks obtained by the appellant under various heads.

3. If some marks have been prescribed for the performance, the marks secured by the appellant during the last four years against the performance."

18. The SBI then challenged the order of the CIC before the High Court stating that the said information was exempt from disclosure under Section 8 (1) (e) and (j) of the RTI Act. The High Court negated this submission and explained that the information sought by the applicant is in respect of selection process conducted by the public authority for filling a public post and that the information with the public authority obtained under such process cannot be said to be available to it in a fiduciary relationship while was exempted from disclosure under Section 8 (1)(e) of the RTI Act.

19. It is urged by Mr. Kapur that in the SLP a ground was raised that the decision of the Supreme Court in Dev Dutt v. Union of India was passed without referring to an earlier judgment of the Larger Bench of the three judges in Baikuntha Nath Das v. Chief District Medical Officer, Baripada (1992) 2 SCC 299 and, therefore, reliance placed by the CIC on the decision in Dev Dutt v. Union of India was erroneous. It is urged that on that basis a stay was granted by the Supreme Court of the judgment of the Punjab & Haryana High Court. It is not clear, however, whether any final view has been taken or whether the

disclosure of the marks obtained even by the applicant for information was exempted from disclosure under Section 8(1) (e) or (j) of the RTI Act. Consequently, this Court, therefore, proposes to decide the question whether the information sought by the Respondent is exempted from disclosure under Section 8 (1) (e) and (j) of the RTI Act independent of the decision of the Punjab & Haryana High Court in C.W.P. No. 20566 of 2008.

20. The decision in Baikuntha Nath Das was delivered in the context of a challenge to an order of „compulsory retirement“. It was explained by the Supreme Court that an order of compulsory retirement is not a punishment and that "it implies no stigma nor any suggestion of misbehaviour. Principles of natural justice have no place in the context of an order of compulsory retirement." In that context, it was observed that the non- communication of an adverse entry to the person who was being compulsory retired could not by itself be a ground to set aside the order of compulsory retirement. The precise observation of the Supreme Court in this regard, as found in para 34 (v) of the said order, which reads as under: "34 (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

21. The factual background in Dev Dutt v. Union of India was very different. That was the case of a denial of promotion, the benchmark for which was the grading of "very good". For the year 1993-94 the Appellant who was being considered for promotion as Superintending Engineer, was graded as „good“ in his ACR which was effectively a downgrading from the entry for the previous year which was "very good". It was explained that inasmuch as the downgrading from "very good" to "good" resulted in a denial of consideration of his case for promotion, such downgrading was indeed adverse to the candidate. Although per se the entry "good" was not usually considered an adverse entry, in the context in which such entry resulted in an adverse consequence to the employee, it became an adverse entry. Therefore, the factual context in Dev Dutt was entirely different from the context in Baikuntha Nath Das. What Dev Dutt appears to have done was to carry forward the law relating to communication of adverse entries in the ACR in compliance with the principles of natural justice. It explained that it was the effect of the entry which had to be considered and not necessarily the entry itself. Even where the entry may be „good“ which is per se not adverse, it may be rendered adverse because it may have adverse consequence for the employee.

22. What is important to note is that neither the decision in Baikuntha Nath Das nor the decision in Dev Dutt has considered the effect and impact of the RTI Act. The very object and purpose of the RTI Act is to make the working of public authorities transparent and accountable. For the purpose of the RTI Act, all information held by a public authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the public authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden, therefore, is entirely on the public authority to show why the information sought from it should not be disclosed.

23. In the considered view of this Court, an employee of a public authority is entitled to know all the details concerning himself under the RTI Act, including the details concerning the denial of his promotion unless the public authority is able to show that such information is exempt from disclosure under Section 8 (1) (e) and (j) of the RTI Act. Sections 8 (1) (e) and (j) of the RTI Act read as under:

"Section 8 Exemption from disclosure of Information (1)
Notwithstanding anything contained in this Act, there shall be no obligation to given any citizen:-

(e) information available to a person, in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the large public justifies the disclosure of such information."

24. It was urged by Mr. Kapur that marks given in the PAF by the Superior Officer of the Respondent was information held by the SBI in a fiduciary capacity and that disclosure of such information, even to the Respondent, would be in breach of the fiduciary relationship that the SBI has with the superior officer. In the considered view of this Court, this is a misreading of Sections 8 (1) (e) and (j) of the RTI Act. The fiduciary relationship, if at all, is between the employer and the

employee. The information which is expected to be kept exempt from disclosure is the information concerning the employee, in this case, the Respondent herein. The exemption is from disclosure to a third party and certainly not to the Respondent himself. In fact, as explained in Dev Dutt, if the intention of making an adverse entry is to enable the Respondent to improve his performance, then that purpose is not served by keeping the information from him. Unless the adverse entry is communicated to the employee and he is allowed to explain his position, the purpose of getting him to improve his performance will not be achieved.

25. The submission that the disclosure of such information would jeopardize the relationship between the Respondent and the superior officer who recorded the entry is also misconceived. The Respondent already knows who his superior officer is and that it is the superior officer who has recorded the adverse entry. That fact is not a secret as far as the Respondent is concerned. Therefore, this can hardly be the ground to deny the Respondent information concerning the adverse entry made in the Respondent's ACR or his PAF. If the object is that the Respondent should improve his performance, then it is in the best interests of the organisation itself and the Respondent that such information is disclosed to the Respondent. In the considered view of this Court, the information sought by the Respondent concerning himself, and which has been directed to be disclosed by the CIC, is not protected from exemption under Section 8 (1) (e) of the RTI Act. This is also the tenor of the judgment of the learned Single Judge of this Court in Union of India v. Central Information Commission 165 (2009) DLT 559 where while interpreting Section 8 (1) (e) of the RTI Act it was explained that where information can be furnished without compromising or affecting confidentiality and identity, it should be supplied and the bar under Section 8 (1) (e) cannot be invoked. There is no question, therefore, of not providing the information concerning the Respondent to the Respondent himself.

26. The provision of Section 8(1) (j) is also not attracted. The disclosure to the Respondent of the information concerning himself can hardly be said to be an unwarranted invasion of his privacy. This is information about himself which he needs to know as it provides the reason why he was not considered for promotion. Therefore, the information directed to be disclosed by the SBI to the Respondent is only the "disaggregated marks awarded to him in the promotion process" and cannot be stated to be covered under Section 8 (1)(j) of the RTI Act.

27. No other point was urged by Mr. Kapur, learned counsel for the Petitioner.

28. For all the aforementioned reasons, this Court finds no ground to interfere with the impugned order of the CIC.

29. The writ petition and the pending application are dismissed. S.
MURALIDHAR, J

JULY 09, 2010

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